

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA  
VENTURA

MINUTE ORDER

DATE: 08/05/2015

TIME: 11:21:00 AM

DEPT: 43

JUDICIAL OFFICER PRESIDING: Kevin DeNoce

CLERK: Tiffany Froedge

REPORTER/ERM:

CASE NO: **56-2014-00454766-CU-OE-VTA**

CASE TITLE: **Jeanette Munden vs Los Robles Regional**

CASE CATEGORY: Civil - Unlimited      CASE TYPE: Other employment

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**EVENT TYPE:** Ruling on Submitted Matter

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**APPEARANCES**

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The Court, having previously taken the Motion to Compel under submission, now rules as follows:

**The Court's ruling on the submitted matter is as follows:**

Grant Plaintiff's request for an order compelling Defendant's further responses to special interrogatory (set no. 1) nos. 4, 5, and 6. Defendant is ordered to serve Plaintiff's counsel with further responses as requested regarding the putative class, by no later than August 20, 2015.

Grant in part, and deny in part, Defendant's request for an order compelling Plaintiff's further response to request for production (set no. 1), as follows:

**RFP 4.** Defendant is to provide a randomized representative sampling of the redacted personnel files of 25% of the putative class within thirty days OR provide Plaintiff with agreeable contact information. The parties are ordered to meet and confer regarding the precise method of sampling and/or stipulate to the providing of contact information. If an agreement regarding contact information cannot be reached, all identifiable information of the individual putative class members (including contact information and social security numbers) is to be redacted from the representative sampling.

**RFP 5-8, 18-19, 29.** Defendant to respond as Plaintiff requested regarding the putative class.

**RFP 13-17, 20-23, 25-27, 30.** Defendant to respond as Plaintiff requested, but limited to only those employees included in RFP no. 4's randomized representative sampling.

Defendant is ordered to serve Plaintiff's counsel with further responses, by no later than September 5, 2015, or as otherwise stipulated between the parties.

Deny sanctions.

**Discussion:**

*Timeliness* – The discovery at issue, both the Special Interrogatories and Requests for Production, was

propounded on 11/11/14. D responded on 1/15/15. After a meet and confer letter was sent by P on 2/3/15, the parties apparently agreed on an extension of time to file these Motions to 7/9/15 (there is no email/letter showing the parties agreement to the extension). The Motions were filed on 7/7/15 and are therefore timely.

"Meet and Confer"- Per §2030.310(b)(2), a motion to compel further responses must be accompanied by a declaration showing good faith efforts at "meeting and conferring" regarding the discovery dispute. The level of effort that constitutes a reasonable and good faith "meet and confer" on a discovery dispute depends on the circumstances of the dispute, including the complexity of the discovery, the history of litigation, and the nature of the interaction between counsel. *Obregon v. Sup. Ct.* (1998) 67 Cal.App.4th 424, 431-433.

Here, Plaintiff submits evidence that the parties exchanged meet and confer letters. P sent a lengthy letter on 2/3/15 (9 pages not including attachments). D sent a 4-page response on 3/12/15. D complains that it did not receive any subsequent meet and confer letter from P until 5/19/15 when the parties were discussing the Belaire-West procedure, and that the 7/9/15 extension was offered to allow the completion of the Belair-West agreement after the hearing on D's demurrer in the Cheema matter. D complains that P jumped the gun by filing the Motions on 6/27/15. But D is incorrect. The Motions were not filed until 7/7/15.

General Propositions re: Class Action discovery

Discovery on the merits of the class members' collective claims can be complex, costly, and time-consuming. Such discovery should generally be postponed until after a class is actually certified. However, "Each party [...] must have an opportunity to conduct discovery on class action issues before filing documents to support or oppose a class action certification motion (*Carabini v. Superior Court*, *supra*, 26 Cal.App.4th at p. 244; *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 836 [97 Cal.Rptr.2d 226]) so the trial court can realistically determine if common questions are sufficiently pervasive to permit adjudication in a class action. (*Atari, Inc. v. Superior Court* (1985) 166 Cal.App.3d 867, 870 [212 Cal.Rptr. 773].)" *Stern v. Superior Court* (2003) 105 Cal.App.4th 223, 232-33

Special Interrogatories

The Special Rogs at issue state as follows:

- IDENTIFY the method for recording the hours worked by PLAINTIFF and members of the PROPOSED PLAINTIFF CLASS during the CLASS PERIOD. This specifically includes, but is not limited to, a description, by manufacturer, model number all time clocks, or other equipment used to record hours worked, and the dates each such equipment was in use.
- IDENTIFY all third parties used by DEFENDANT to generate WAGE STATEMENTS for members of the PROPOSED PLAINTIFF CLASS during the CLASS PERIOD (for purposes of these interrogatories, the term "WAGE STATEMENT" is synonymous with the term "paycheck statement" and means the detachable part of the check, draft, or voucher reflecting payment of wages.
- IDENTIFY all PERSONS who were authorized to modify or edit the time records of the members of the PROPOSED PLAINTIFF CLASS during the CLASS PERIOD.

D responded to each request with the following objections: "vague, ambiguous, overbroad, burdensome, oppressive, and harassing; it is premature, particularly as no class has been certified; and, to the extent it seeks information neither relevant to the subject matter of the instant litigation, nor reasonably calculated to lead to the discovery of admissible evidence." The objection to #6 also included an objection "to the extent it seeks to violate third party privacy rights to an extent incommensurate with

Plaintiff's legitimate discovery needs." D then responded to each request as follows:

4. "Pursuant to company policy, Plaintiff was instructed to accurately record all hours worked by swiping her badge at a KRONOS time clock."
5. "The Dallas Payroll Service Center."
6. "Janeen Gallegos and Karina Javier has access to Plaintiff's KRONOS time records. Employees of Defendant may only be contact through counsel."

Per 2030.220(a), on "receipt of a response to interrogatories, the propounding party may move for an order compelling a further response if the propounding party deems that any of the following apply: (1) An answer to a particular interrogatory is evasive or incomplete. [...] (3) An objection to an interrogatory is without merit or too general." *Columbia Broadcasting System, Inc. v. Superior Court for Los Angeles County* (1968) 263 Cal.App.2d 12, 18, "In short, the burden is on defendants to show that their objections are valid."

As to the relevance objection, the information seems calculated to provide Plaintiff with information calculated to lead to admissible evidence; i.e., witnesses to Defendant's policies regarding wage statements, rounding policies, break compensation, and general time keeping. P's discovery requests clear the low bar required for relevance.

As to the vague and ambiguous objections, the requests are not either. The nature of the information sought is apparent and was sufficient to allow Defendant to respond as to Plaintiff.

As to the claim that the request is overbroad, burdensome, oppressive or harassing, the objecting party has the burden of providing evidence showing the quantum of work requires; time, money, procedure. There is no evidence that the information requested in the Special Rogs is difficult to obtain or that to respond would require any undue burden. Unlike the RFP, there is no supporting declaration from D's HR VP. Given that the responses for each of the requests 4-6 (in connection with the P only) were quite short and succinct, it appears that D's responses for each of the other potential class members will be likewise short and succinct.

As to the objection that the discovery is premature, a plaintiff is entitled to discovery before a class is certified, and does not need to wait until after the class is certified. "[B]efore class certification has taken place; all parties are entitled to 'equal access to persons who potentially have an interest in or relevant knowledge of the subject of the action, but who are not yet parties.' (citation)" *Koo v. Rubio's Restaurants, Inc.* (2003) 109 Cal.App.4th 719, 736. See also CCP 2017.010.

As to the privacy objection regarding Special Interrogatory no. 6, the request seeks only the names of those authorized to modify or edit the time records. This request does not seem to call for the revelation any sensitive information. See *Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal.4th 360, 373 ("Contact information regarding the identity of potential class members is generally discoverable, so that the lead plaintiff may learn the names of other persons who might assist in prosecuting the case.") As in *Pioneer*, here P has agreed to contact the third party employees through Defendant's counsel.

Because D has not justified its objections the Motion is granted as to each request; nos. 4-6.

#### Requests for Production

Per CCP 2031.310(b) a motion to compel further responses to a RFP, "shall set forth specific facts showing good cause justifying the discovery sought by the demand" in addition to the meet and confer declaration. Absent a claim of privilege or attorney work product, the party who seeks to compel production (here, Plaintiff) has met his burden of showing good cause simply by a fact-specific showing

of relevance. *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98. Once good cause was shown, the burden shifts to the objecting party (here, Defendant) to justify his objection. See *Coy v. Superior Court* (1962) 58 Cal.2d 210, 220–221.

D responded to each of the RFPs with the following objections: vague, ambiguous, compound, overbroad, burdensome, oppressive, and harassing; duplicative of other requests; fails to identify the documents with reasonable particularity; premature, particularly as no class has been certified; seeks privileged and/or confidential documents; to the extent it seeks information neither relevant to the subject matter of the instant litigation, nor reasonably calculated to lead to the discovery of admissible evidence; and violating third party privacy rights to an extent incommensurate with Plaintiff's legitimate discovery needs.

Relevance has been shown. The information seems calculated to provide Plaintiff with information calculated to lead to admissible evidence; i.e., terms of employment, timekeeping records, payroll records, written policies/procedures/handbooks/etc. D has not argued any privilege. The question is, whether P has shown that the information requested is relevant to the class certification issue, and not the merits of the class action. Where the class certification issues (e.g., commonality, ascertainability, and numerosity) overlap with the class merits, discovery should be permitted. Plaintiff has met her burden of showing good cause, accordingly, the burden shifts to the Defendant to justify its objections.

The information requested is not necessarily premature. P is entitled to conduct discovery regarding issues relating to class certification. The discovery requested goes to issues of class certification. Regarding privacy objections, an employee's employment records may only be produced on a showing that there is a "compelling need" for the documents and that it cannot be obtained in depositions or from other non-confidential sources. *Harding Lawson Associates v. Superior Court*, (1992) 10 Cal.App. 4<sup>th</sup> 7, 10.

#### Sanctions

Per CCP 2030.300(d) for special interrogatories, and CCP 3031.310(h) for RFPs, the court "shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney" who unsuccessfully makes or opposes a motion to compel a further response to interrogatories or production demand, "unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust."

The Court declines to award sanctions. Also, P's notice of Motion failed to request sanctions, and accordingly, there is no evidence to support any particular amount of sanctions; i.e., no hourly rate or hours worked or costs expended. Imposition of sanctions under the circumstances would be unjust.

Notice to be given by clerk.